

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VERA W. CHANEY and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Chamblee, GA

*Docket No. 99-526; Submitted on the Record;
Issued May 24, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective July 20, 1997; and (2) whether the Office abused its discretion by denying merit review of appellant's claim.

The Board has given careful consideration to the issues involved, the contentions of appellant on appeal and the entire case record. The Board finds that the April 30, 1998 decision of the Office hearing representative is in accordance with the facts and the law in the case and hereby adopts the findings and conclusions of the hearing representative.

The Board also finds that the Office properly denied merit review.

On July 5, 1998 appellant requested reconsideration and submitted additional medical evidence in support of her request. In its decision dated August 17, 1998, the Office denied appellant's request, finding the evidence submitted irrelevant and therefore insufficient to warrant merit review.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,¹ the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.² When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.³ To be entitled to merit review of an

¹ Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

² 20 C.F.R. § 10.138(b)(1) and (2).

Office decision denying or terminating a benefit, a claimant must also file his or her application for review within one year of the date of that decision.⁴

The issue in this case is whether the Office properly terminated appellant's compensation benefits effective July 20, 1997. With her request for reconsideration, appellant did not advance a point of law not previously considered, articulate any legal argument with a reasonable color of validity, or submit relevant and pertinent medical evidence. While she submitted additional evidence, it merely consisted of disability slips from 1985, 1988 and 1992, affidavits regarding requests for handicapped parking, and a copy of a decision dated October 11, 1984 in which the Office accepted that appellant sustained an employment-related back strain. Consequently, the evidence submitted by appellant with her reconsideration request did not meet the requirements set forth at 20 C.F.R. § 10.138.

The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.⁵ The Board finds that the Office properly denied appellant's application for reconsideration of her claim.

The decisions of the Office of Workers' Compensation Programs dated August 17 and April 30, 1998 are hereby affirmed.

Dated, Washington, D.C.
May 24, 2000

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

³ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

⁴ 20 C.F.R. § 10.138(b)(2).

⁵ *See Daniel J. Perea*, 42 ECAB 214, 221 (1990).